

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

CRIMINAL CASE NO. 3:01cr216-11

UNITED STATES OF AMERICA,)

)

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vs.

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GERALD LAMONT STEELE.)

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ORDER

THIS MATTER is before the Court on the Defendant's *pro se* Motion for Reduction of Sentence Based on Application of Retroactive Applicable Amendment [Doc. 259, filed March 14, 2008] and his Motion to Reduce Sentence filed by counsel [Doc. 285, filed November 14, 2008].

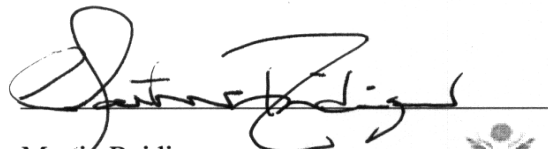
As stated by the Probation Office in the Supplement to the Presentence Report pursuant to Crack Cocaine Guideline Amendment, the Defendant faced a statutory mandatory minimum sentence of 240 months due to a prior felony drug conviction for which the Government filed notice pursuant to 21 U.S.C. §851.¹ [Doc. 289]. Although the sentencing court

¹ The §851 notice in this case was contained within the body of the indictment. [Doc. 3,].

departed downward from that mandatory sentence pursuant to U.S.S.G. §5K1.1 and 18 U.S.C. §3553(e), the notice pursuant to §851 was never withdrawn. As a result, the Defendant's sentence was based on the mandated statutory minimum sentence, not a sentencing range authorized by the Sentencing Guidelines section setting forth offense levels for crack cocaine. United States v. Hood, ___ F.3d ___, 2009 WL 416979 (4th Cir. 2009). Thus, the Defendant is not entitled to a reduced sentence under 18 U.S.C. §3582(c)(2) which authorizes modification of a sentence based on a sentencing range subsequently lowered by the Sentencing Commission. Id. Indeed, if Amendment 706 had been in place at the original sentencing, the guideline sentence would have remained the statutory mandatory minimum. Id. Therefore the amendment has no impact on the Defendant's sentence. Id.

IT IS, THEREFORE, ORDERED that the Defendant's *pro se* Motion for Reduction of Sentence Based on Application of Retroactive Applicable Amendment [Doc. 259] and his Motion to Reduce Sentence [Doc. 285] are hereby **DENIED**.

Signed: April 6, 2009


Martin Reidinger
United States District Judge

